

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

GLADYS F. SMITHIES,
EXECUTRIX OF THE ESTATE OF
JOHN T. SMITHIES, DECEASED

Claim No. CU -3175

Decision No. CU

3671

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

George E. Patterson, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$482,366.00, was originally presented by JOHN T. SMITHIES, based upon the asserted loss of certain real and personal property in Cuba. On January 16, 1968, JOHN T. SMITHIES died and his widow, GLADYS F. SMITHIES, was duly appointed Executrix of his estate. Accordingly, the executrix has been substituted as claimant in this proceeding. The record shows that the deceased was a native-born national of the United States.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Originally, the claim was based upon certain real and personal property in Cuba, including stock interests in certain Cuban corporations. Subsequently, it appeared that the real property and the stock interests had been acquired by inheritance by the executrix herein, a nonnational of the United States, and that the deceased never owned any interest therein. Accordingly, counsel for claimant requested under date of May 5, 1969 that the portion of the claim based upon the inherited interests be withdrawn.

The Commission, having duly considered this matter, it is ORDERED that the request be and it is hereby granted.

Accordingly, the claim is now based upon the asserted loss of certain crops and certain household effects in which the deceased owned a one-half interest.

The record establishes and the Commission finds that the deceased and the executrix had rented certain real property in Cuba from a Cuban corporation in which the executrix had an interest, inherited from her late father. It further appears from the record that they cultivated the land and grew sugar cane and other crops. The areas covered by these crops were 233.1 acres for the sugar cane and 733.26 acres for the other crops.

On the basis of the entire record, the Commission finds that the deceased owned a one-half interest in said crops.

The Commission further finds that the deceased owned a one-half interest in certain furniture and other household effects in an apartment in Havana, Cuba. Under date of November 17, 1967, the deceased stated in

a letter to the Commission that his property had been taken by Cuba pursuant to Law 989 because he fled from Cuba.

On December 6, 1961, the Cuban Government published Law 989, which confiscated all real property, personal property, rights, shares, stocks, bonds, securities and bank accounts of persons who had left the country. The Commission finds that this law applied to the deceased, who had left Cuba prior to that date, and that his one-half interests in the crops and the household effects were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. The Commission further finds that as a result of said action the deceased sustained a loss of property within the meaning of Title V of the Act. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimant has submitted an affidavit, dated May 2, 1969, from the former President of the National Executive Committee of the Association of Sugar Plantation Owners of Cuba, who was personally familiar with the property in question on which the crops were cultivated by the deceased and his wife, the executrix. This affiant has stated that the sugar cane had a value of \$100.00 per acre and that the other crops had a value of \$50.00 per acre.

The Commission, therefore, finds that the values of the sugar cane and other crops taken by Cuba were \$23,310.00 for the sugar cane and \$36,663.00 for the other crops. Accordingly, it is concluded that the deceased sustained a loss in the amount of \$29,986.50 on December 6, 1961.

On the basis of the evidence of record, including an itemized list, the Commission finds that the fair and reasonable value of the household effects was \$6,050.00 on December 6, 1961, and that the deceased sustained a loss in the amount of \$3,025.00. The aggregate loss sustained by the deceased was, therefore, \$33,011.50.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that GLADYS F. SMITHIES, EXECUTRIX OF THE ESTATE OF JOHN T. SMITHIES, DECEASED, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-three Thousand Eleven Dollars and Fifty Cents (\$33,011.50) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

28 MAY 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)